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AUG 27 2007

OFFICE OF PETITIONS

In re Application of : DECISION ON APPLICATION
Ritzeler et al. : FOR
Application No. 10/642,970 : PATENT TERM ADJUSTMENT
Filed: August 18, 2003 :
Atty Docket No. DEA V2002/0063 US :

This is a decision on the "REQUEST FOR PATENT TERM ADJUSTMENT PURSUANT TO 37 CFR 1.705," filed June 19, 2007. Applicants request that the patent term adjustment at the time of the mailing of the Notice of Allowance be corrected from one hundred eleven (111) days to three hundred forty-four (344) days.

The application for patent term adjustment is GRANTED to the extent indicated herein.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is **THREE HUNDRED TWENTY-FOUR** (324) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On March 19, 2007, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 111 days. The instant application for patent

term adjustment was timely filed¹. Applicants dispute the reduction of 233 days for applicants' delay in responding to the Notices to File Missing Parts of Nonprovisional Application mailed November 12, 2003, and May 4, 2004.

The application history has been reviewed and it has been determined that the initial patent term adjustment of 111 days is incorrect. On November 12, 2003, the Office mailed a Notice to File Missing Parts of Nonprovisional Application, which set a two-month extendable period to submit an executed oath or declaration and a late oath or declaration surcharge. On January 7, 2004, applicants submitted a reply and an authorization to charge their deposit account. However, the reply consisted of a signed power of attorney and only the first page of the declaration without the complete signature page. On May 4, 2004, the Office mailed a second Notice to File Missing Parts, setting a two-month period to file an executed oath or declaration. On January 5, 2005, the Office mailed a Notice of Abandonment for failure to submit a timely and proper reply to the Notice of Missing Parts. On March 25, 2005, applicants filed a "PETITION TO WITHDRAW HOLDING OF ABANDONMENT PURSUANT TO § 1.181(a)," which included copies of applicants' responses filed on January 7, 2004, and June 16, 2004. On April 29, 2005, the Office mailed a Withdrawal of the Previously Sent Notice of Abandonment, stating that the Notice of Abandonment mailed on January 5, 2005, was sent in error and was withdrawn.

A review of the application file confirms that a complete reply in the form of an executed declaration was filed on January 7, 2004, and resubmitted on June 16, 2004, as evidenced by applicants' Auto Reply Facsimile Transmissions.² Under these circumstances, applicants are correct that they did not fail to engage in reasonable efforts to conclude processing the application within the meaning of 37 CFR 1.704(b). Their complete responses were filed on January 7, 2004, and June 16, 2004.

¹ Office records indicate that the Issue Fee was also received on June 16, 2007.

² As the evidence establishes that the response filed January 7, 2004, was complete, no reduction pursuant to 37 CFR 1.704(c)(7) is warranted for applicants' filing a reply with an omission.

Nevertheless, applicants filed the petition to withdraw the holding of abandonment outside of the two-month period under 37 CFR 1.704(c)(4). Specifically, 37 CFR 1.704(c)(4) indicates that an applicants' failure to file a petition to withdraw a holding of abandonment within two months from the mailing date of a notice of abandonment is a circumstance that constitutes a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application. Any applicant who believes that the Office improperly held an application abandoned is expected to file a petition to withdraw the holding of abandonment within two months from the mailing date of a notice of abandonment. See MPEP §§ 711.03(c)(I) and 2732. The notice of abandonment was mailed on January 5, 2005, and the petition was not filed until March 25, 2005. Thus, applicants failed to engage in reasonable efforts to conclude processing of the application by delaying in the filing of the petition to withdraw the holding of abandonment by 20 days within the meaning of 37 CFR 1.704(c)(4).

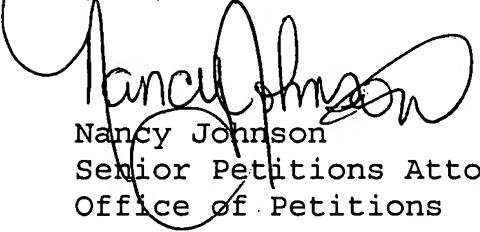
In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is THREE HUNDRED TWENTY-FOUR (324) days.

Receipt of the \$200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fees are required.

Applicants are reminded that any days of delay for Office issuance of the patent more than 3 years after the filing date of the application which overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. Further, in considering the overlap, the entire period during which the application was pending (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A). See 35 U.S.C. 154(b)(1)(B); 35 U.S.C. 154(b)(2)(A); and 37 CFR 1.703(f).

This matter is being referred to the Office of Patent Publications for issuance of the patent.

Telephone inquiries specific to this matter should be directed to Christina Tartera Donnell, Senior Petitions Attorney, at (571) 272-3211.


Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of Revised PAIR Screen

PALM INTRANET

PTA Calculations for Application: 10/642970					
Application Filing Date:		08/18/2003	PTO Delay (PTO):		344
Issue Date of Patent:			Three Years:		0
Pre-Issue Petitions:		0	Applicant Delay (APPL):		233
Post-Issue Petitions:		0	Total PTA (days):		324
PTO Delay Adjustment:		213			

File Contents History					
Number	Date	Contents Description	PTO	APPL	START
85	08/24/2007	ADJUSTMENT OF PTA CALCULATION BY PTO		20	
84	08/24/2007	ADJUSTMENT OF PTA CALCULATION BY PTO	233		
72	03/19/2007	MAIL NOTICE OF ALLOWANCE			
71	03/15/2007	ISSUE REVISION COMPLETED			
70	03/15/2007	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
69	03/15/2007	NOTICE OF ALLOWABILITY			
68	03/09/2007	DATE FORWARDED TO EXAMINER			
67	03/06/2007	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
66	03/09/2007	DATE FORWARDED TO EXAMINER			
65	03/06/2007	REQUEST FOR CONTINUED EXAMINATION (RCE)			
64	03/09/2007	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA).			
63	03/06/2007	WORKFLOW - REQUEST FOR RCE - BEGIN			
62	12/11/2006	EXPORT TO INITIAL DATA CAPTURE			
61	12/06/2006	MAIL NOTICE OF ALLOWANCE			
60	12/04/2006	ISSUE REVISION COMPLETED			
59	12/04/2006	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
58	12/04/2006	NOTICE OF ALLOWABILITY			
57	11/14/2006	DATE FORWARDED TO EXAMINER			
56	11/06/2006	RESPONSE AFTER NON-FINAL ACTION			
55	11/10/2006	FINISHED INITIAL DATA CAPTURE			
54	10/04/2006	MAIL NOTICE OF INFORMAL OR NON-RESPONSIVE RCE AMENDMENT			
		NOTICE OF INFORMAL OR NON-RESPONSIVE			

53	10/04/2006	RCE AMENDMENT.			
52	10/04/2006	DATE FORWARDED TO EXAMINER			
51	09/22/2006	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
50	10/04/2006	DATE FORWARDED TO EXAMINER			
49	09/22/2006	REQUEST FOR CONTINUED EXAMINATION (RCE)			
48	10/04/2006	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
47	09/22/2006	WORKFLOW - REQUEST FOR RCE - BEGIN			
46	06/26/2006	EXPORT TO INITIAL DATA CAPTURE			
45	06/22/2006	MAIL NOTICE OF ALLOWANCE			
44	06/20/2006	ISSUE REVISION COMPLETED			
43	06/20/2006	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
42	06/20/2006	NOTICE OF ALLOWABILITY			
41	06/07/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
40	06/07/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
39	06/11/2006	DATE FORWARDED TO EXAMINER			
38	06/07/2006	REQUEST FOR CONTINUED EXAMINATION (RCE)			
37	06/11/2006	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
36	03/13/2006	EXPORT TO INITIAL DATA CAPTURE			
35	03/09/2006	MAIL NOTICE OF ALLOWANCE			
34	03/09/2006	MAIL EXAMINER'S AMENDMENT			
33	03/01/2006	ISSUE REVISION COMPLETED			
32	03/01/2006	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
31	03/01/2006	EXAMINER'S AMENDMENT COMMUNICATION			
30	03/01/2006	NOTICE OF ALLOWABILITY			
29	03/01/2004	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
28	01/04/2006	DATE FORWARDED TO EXAMINER			
27	12/20/2005	RESPONSE AFTER NON-FINAL ACTION			
25	09/27/2005	MAIL NON-FINAL REJECTION	344		-1
24	09/19/2005	NON-FINAL REJECTION			
23	06/10/2005	IFW TSS PROCESSING BY TECH CENTER			

		COMPLETE			
22	06/10/2005	CASE DOCKETED TO EXAMINER IN GAU			
21	04/28/2005	APPLICATION DISPATCHED FROM OIPE			
20	04/29/2005	APPLICATION IS NOW COMPLETE			
19	03/25/2005	ADDITIONAL APPLICATION FILING FEES	233	14	
18	03/25/2005	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
17	04/28/2005	CORRESPONDENCE ADDRESS CHANGE			
16	01/05/2005	WITHDRAW PRE-EXAM ABANDON			
15	07/06/2004	ABANDONMENT -- DURING PREEXAM PROCESSING			
14	05/04/2004	NOTICE MAILED--APPLICATION INCOMPLETE-- FILING DATE ASSIGNED			
11	11/12/2003	PRE-EXAM OFFICE ACTION WITHDRAWN			
10	01/07/2004	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
9	03/01/2004	REFERENCE CAPTURE ON IDS			
8	03/01/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
7	08/18/2003	REQUEST FOR FOREIGN PRIORITY (PRIORITY PAPERS MAY BE INCLUDED)			
6	04/02/2004	CASE CLASSIFIED BY OIPE			
5	11/12/2003	NOTICE MAILED--APPLICATION INCOMPLETE-- FILING DATE ASSIGNED			
4	11/03/2003	CASE CLASSIFIED BY OIPE			
3	11/03/2003	CLEARED BY OIPE CSR			
2	09/21/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	08/18/2003	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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